

803 KAR 25:012. Resolution of medical disputes.

RELATES TO: KRS 342.020, 342.035, 342.125, 342.260, 342.325, 342.735

STATUTORY AUTHORITY: KRS 342.020, 342.260(1), 342.735(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the Executive Director of the Office of Workers' Claims to promulgate administrative regulations necessary to implement KRS Chapter 342. KRS 342.325 requires that a question arising under KRS Chapter 342 which is not settled by agreement of the parties shall be determined by an administrative law judge. KRS 342.735(1) requires the executive director to promulgate administrative regulations to expedite the payment of medical expense benefits. This administrative regulation establishes a procedure for the resolution of a medical dispute before an administrative law judge.

Section 1. Procedure. (1) A dispute regarding payment, nonpayment, reasonableness, necessity, or work-relatedness of a medical expense, treatment, procedure, statement, or service which has been rendered or will be rendered under KRS Chapter 342 shall be resolved by an administrative law judge following the filing of a Form 112 (Medical Dispute).

(2) Form 112 may be filed by an employee, employer, carrier or medical provider.

(3)(a) The Form 112 shall be accompanied by the following items:

1. Copies of all disputed bills;
2. Supporting affidavit setting forth facts sufficient to show that the movant is entitled to the relief sought;
3. Necessary supporting expert testimony; and
4. The final decision from a utilization review or medical bill audit with the supporting physician opinion.

(b) A single Form 112 may encompass statements, services, or treatment previously rendered as well as future statements, services, or treatment of the same nature or for the same condition, if specifically stated.

(4)(a) If an application for adjustment of claim concerning the injury or disease which is the subject of the dispute has not been filed, copies of the Form 112 and attachments sufficient to serve the other parties, including the employee, employer, and medical provider, shall be filed with the executive director, who shall make service on the named parties.

(b) An opposing party may, within twenty (20) days after service by the executive director, file a response, accompanied by affidavit setting forth facts sufficient to show that the movant is not entitled to the relief sought.

(c) A response shall be served on the executive director and all other parties within the twenty (20) day limit established in paragraph (b) of this subsection.

(d) The dispute shall be assigned to the Frankfort motion docket, where it shall be summarily decided upon the pleadings or assigned for further proceedings before an administrative law judge.

(5) If an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, the movant shall file a Form 112 with the executive director and shall also serve copies on the other parties of record. The movant shall further file a motion to join the medical provider as a party to the claim. This motion shall conform with the requirements of 803 KAR 25:010, Section 4.

(6) Following resolution of a workers' compensation claim by final order, a motion to reopen pursuant to 803 KAR 25:010, Section 4(6), shall be filed in addition to the Form 112.

(a) Unless utilization review has been initiated, the motion to reopen and Form 112 shall be filed within thirty (30) days following receipt of a complete statement for services pursuant to 803 KAR 25:096.

(b) The motion to reopen and Form 112 shall be served on the parties, upon the employee, even if represented by counsel, and upon the medical providers whose services or charges are at issue. If appropriate, the pleadings shall also be accompanied by a motion to join the medical provider as a party.

(c) This dispute shall be assigned to the Frankfort motion docket, where it shall be either summarily decided upon the pleadings, or assigned to an administrative law judge for further proof time and final resolution.

(7)(a) Except as provided by paragraph (b) of this subsection, a Form 112 shall be accompanied by a motion for a partial remand to the administrative law judge assigned to the claim if an appeal is pending before the Workers' Compensation Board concerning the injury or disease which is the subject of the dispute.

(b) If entitlement to medical services is dependent upon resolution of an issue on appeal, the Form 112 shall be accompanied by a motion to the Workers' Compensation Board to hold the Form 112 in abeyance pending a final decision on the appeal.

(8) If the contested expense is subject to utilization review, a medical dispute shall not be filed prior to exhaustion of the utilization review process. The employer or its medical payment obligor shall have thirty (30) days following the final utilization review decision to file a medical dispute.

(9) Repeated filing of identical Form 112's concerning the same subject matter shall not be necessary if an administrative law judge has ruled on both the past expenses and the necessity of future expenses.

(10) A party aggrieved by a decision of the administrative law judge in a medical dispute may appeal to the Workers' Compensation Board by following the procedures established in 803 KAR 25:010, Section 20.

Section 2. In accordance with KRS 342.310, a sanction:

(1) Shall be assessed, as appropriate, if:

(a) An employer or a medical payment obligor challenges a bill without reasonable medical or factual foundation; or

(b) A medical provider, without reasonable foundation, submits a bill for a nonwork-related condition to an employer or its medical payment obligor; and

(2) May be imposed if a movant files a medical dispute prior to exhaustion of the required utilization review or medical bill audit procedures.

Section 3. Expedited Medical Disputes. (1) If a dispute arises requiring expedited determination of the reasonableness, appropriateness or employer's liability for proposed medical care, the lack of which could lead to serious physical or mental disability or death, an employee or employer shall file a written request on Form 120EX to seek an expedited determination. The Form 120EX shall be filed with:

(a) An affidavit of the employee or other witness that the injury or disease which is the subject of the dispute is compensable under KRS Chapter 342 in the format prescribed in Appendix A;

(b) An affidavit of a physician which shall:

1. Explain why failure to obtain or undertake the proposed medical care within forty-five (45) days could lead to serious physical or mental disability or death of the employee;

2. Include:

a. The diagnosis of the patient;

b. The clinical and diagnostic findings upon which the diagnosis is based;

c. The proposed treatment;

d. The reason why immediate initiation of the proposed treatment is necessary; and

e. If feasible, an estimate of the cost of the proposed treatment; and

3. Comply with the format established in Appendix B; and
- (c) Other affidavit or authenticated document necessary to demonstrate that the movant is entitled to the relief sought.
- (2) If a claim is currently assigned to an administrative law judge, the written request shall be directed to that administrative law judge.
- (3) The Form 120EX and attachments shall be filed in triplicate with the executive director who shall serve copies on the named parties.
- (a) A respondent to a Form 120EX may file a response within ten (10) days of the date on which the Form 120EX is served by mail. Service shall be deemed complete the third day after mailing by the executive director.
- (b) A response shall be accompanied by an affidavit setting forth facts sufficient to demonstrate that the movant is not entitled to the relief sought, and shall be served on the other parties by the respondent.
- (4) The administrative law judge may refer the matter to a worker's compensation specialist or an ombudsman to attempt to effectuate a resolution of the dispute.
- (5) The administrative law judge to whom a request for expedited determination of medical issues is assigned shall issue a ruling within seven (7) days after expiration of the response time.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form 112, "Medical Dispute", (June, 2000 Edition), Office of Workers Claims; and
 - (b) Form 120EX, "Request for Expedited Determination of Medical Issue", (July 14, 1994 Edition), Office of Workers Claims.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Workers Claims, Monday through Friday, 9 a.m. to 4 p.m., at the following locations:
- (a) Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601;
 - (b) 410 West Chestnut Street, Louisville, Kentucky 40202;
 - (c) 220B North 8th Street, Paducah, Kentucky 42001; or
 - (d) 107 Coal Hollow Road, Pikeville, Kentucky 41501.

APPENDIX A AFFIDAVIT OF EMPLOYEE

Affiant, (Name), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns treatment for a condition compensable under the Kentucky Workers' Compensation Act. Affiant further states as follows:

1. Date and time of work-related injury or date on which occupational disease was discovered:
2. Brief description of how injury occurred or how occupational disease was acquired:
3. Date and identity of person to whom notice of injury or occupational disease was given:
4. Medical treatment at issue:
5. Attempts, if any, to obtain approval for contested treatment:

Signature:

STATE OF:

COUNTY OF:

Subscribed and sworn to before me by (name) this (day) day of (month), (year).

Notary Public:

My commission expires:

APPENDIX B AFFIDAVIT OF PHYSICIAN

EXPEDITED MEDICAL DISPUTE

Affiant (Name), a physician whose area of specialization is (specialization), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns a work-related injury or disease.

(1) The following medical care is required: (describe proposed medical care)

(2) The current working diagnosis is as follows:

(3) The proposed treatment is medically necessary because:

(4) The estimated cost of the proposed treatment is:

Affiant further states that failure of (Name of workers' compensation patient) to obtain or undertake this proposed medical care within the next forty-five (45) days could lead to serious physical or mental disability or death because:

Signature:

W.C. Medical Index No.:

Address:

STATE OF:

COUNTY OF:

Subscribed and sworn to before me by (name) this (day) day of (month), (year).

Notary Public:

My commission expires: (19 Ky.R. 1495; eff. 3-9-93; Am. 21 Ky.R. 569; eff. 10-10-94; 23 Ky.R. 1450; 2173; 2481; eff. 12-13-96; 24 Ky.R. 939; 1260; eff. 12-15-97; 27 Ky.R. 1092; 1486; eff. 12-21-2000; TAm eff. 8-9-2007.)